

Number of Prior Convictions

No prior convictions
1 to 4 prior convictions
5 or more prior convictions

Prior Conviction Level

I
II
III

In determining the prior conviction level, a prior offense may be included if it is either a felony or a misdemeanor at the time the offense for which the offender is being sentenced is committed.

Infractions do not count in determining the prior conviction level. Infractions are noncriminal violations of law.

Case Law

- A prior finding of criminal contempt is not a prior conviction.¹
- There is no statute of limitation on the use of prior convictions to determine prior conviction level.²

Example: An offender has two prior felony convictions, two prior misdemeanor convictions, and two prior infractions. All of the convictions occurred in separate years. Only the prior felonies and misdemeanors count. Consequently, the offender has four prior convictions.

Definition of Prior Conviction *G.S. 15A-1340.11(7)*

An offender has a prior conviction when on the date a criminal judgment has been entered:

1. The offender has been convicted of a crime in District Court and has not given notice of appeal, and the time for appeal has expired; or
2. The offender has been convicted of a crime in Superior Court, regardless of whether the conviction is on appeal to the appellate division; or
3. The offender has been convicted of a crime in the courts of the United States, another state, the armed services of the United States, or any other country, regardless of whether the offense would be a crime if it occurred in North Carolina.

Case Law

- A prior conviction exists if the defendant has been found guilty or has entered a plea of guilty or no contest, despite the court's entry of a prayer for judgment continued.³
- A guilty plea for which the defendant was still on probation under G.S. 90-96(a) at the time of his sentencing for another offense qualifies as a prior conviction.⁴

¹ *State v. Reaves*, 142 N.C. App. 629, 544 S.E. 2d 253 (2001).

² *State v. Rich*, 130 N.C. App. 113, 502 S.E.2d 49 (1998).

³ *State v. Hatcher*, 136 N.C. App. 524, 524 S.E.2d 815 (2000).

⁴ *State v. Hasty*, 133 N.C. App. 563, 516 S.E.2d 428 (1999).